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09/450,488 11/29/99 LEBNER

M 0156-2002

EXAMINER
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LEE, K

ART UNIT	PAPER NUMBER
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3761

DATE MAILED:

07/18/00

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QM12/0718

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**09/450,488**

Applicant(s)

**Lebner**

Examiner

**Kim M. Lee**

Group Art Unit  
**3761**



☐ Responsive to communication(s) filed on \_\_\_\_\_

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle* 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claim

☒ Claim(s) 1-20 is/are pending in the applicat

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-20 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☒ The drawing(s) filed on Nov 29, 1999 is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 1 is objected to because of the following informalities:

Claim 1, line "wound" --wound--. Appropriate correction is required.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the elastic tension element recited in claim 15 and the rigid polymer bar recited in claim 17 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3 and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S.

Patent No. 5,534,010 ("Peterson").

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7/19/00  
Regarding claim 1, Peterson anticipates all features of the claim including a first strip (12), a second strip (14) having an adhesive surface (column 3, lines 6-14), a plurality of connectors (filaments 46, 48), pulling elements <sup>29, 30</sup> ~~(32, 34)~~, and means for connecting the filaments to the strips (Figs. 6 and 11). It should be noted that the device is flexible since the tapes are elastic.

Regarding claim 3, Peterson teaches removal of elements (32, 34).

Regarding claim 17, note the stiff cylindrical member (116) and polyamide members (50, 52).

Regarding claim 18, the method as claimed is accomplished by placing the device of Peterson on the user.

Regarding claim 19, note Figs. 1-4 which show the steps of pulling the pulling elements and then removing them as the device is placed on the user.

5. Claims 1, 2, 4, 5, 8-12 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,263,970 ("Prellar").

Regarding claim 1, Prellar anticipates all features of the claim including a first strip (12), a second strip (14) having adhesive (18), connectors (limbs 24.1, 26.1) and pulling elements (24, 26). It should be noted from the drawings that the device is inherently flexible since the connectors fold over and are secured at the pulling elements.

Regarding claim 2, Prellar teaches the strips are made of synthetic plastic (column 2, lines 7-10).

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Regarding claim 4, note Fig. 1 of Prellar which discloses interleaved connectors.

Regarding claim 5, note Figs. 1-5 of Prellar which shows the first elongated connectors adjacent one another and centrally located, and second elongated connectors flanking the elongated connectors at outside edges.

Regarding claim 8, the examiner contends that the elements disclosed in Prellar are **capable** of being cut from sheet stock since nothing in Prellar precludes such a step of forming the device. Applicant should note that step of manufacturing does not propose any structural limitations in the claim.

Regarding claim 9, Prellar discloses wound healing, note Fig. 3.

Regarding claim 10, Prellar discloses curved edges on the strips (50, 52) column 3, lines 47-51).

Regarding claim 11, and the cut-away portion note Fig. 6 of Prellar.

Regarding claim 12, as broadly claimed, Prellar discloses all features of the claim including a device adapted for wound closure alignment since it is semi-transparent.

Regarding claim 14, as can be seen in Fig. 6 of Prellar, the device when in use is adapted for drug delivery in that a drug may be delivered to the wound/incision.

6. Claims 1, 18, 20 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,423,731 ("Roomi").

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Regarding claim 1, Roomi discloses a device for wound/incision closure comprising: adhesive first and second fabric strips (16) which are inherently flexible; first and second pulling elements (22); elongated connectors (20); and means for attaching the connectors to the strips.

Regarding claim 18, the method of the instant invention is practiced by mere application of the device of Roomi.

Regarding claim 20, as can be seen from Figs. 9 and 10, the pulling elements are secured to the skin.

Regarding claim 21, as can be seen from Fig. 5 of Roomi, the connectors are sufficiently spaced-apart to facilitate lateral adjustment of the first and second strips.

7. Claim 22 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. Re. 31,887 ("Hodgson").

Regarding claim 22, Hodgson anticipates all features of the claim including a moisture impervious wound dressing having an adhesive perimeter (column 1, lines 10-68)

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prellar.

Regarding claims 6 and 7, Prellar fails to teach that the pulling elements are either rigid or non-rigid, but reinforced with a rigid element. The examiner contends that such selection of the rigid characteristic is an obvious design choice which does not patentably distinguish applicant's invention absent a critical teaching.

10. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Prellar in view of U.S. Patent No. 5,425,702 ("Carn et al.").

Regarding claim 13, Prellar fails to teach alignment marks. However, it is well known in the art to provide alignment marks on a device to be used on the human body in order to determine proper placement of a device, as evidenced by Carn et al. Although Carn et al. is not a wound closure device, the Carn et al. teach it is conventional to place line markings (indica) on device to be used on the human body for the purpose of determining proper placement of the device on a user. It would have been obvious to one having ordinary skill in the art to modify Prellar with alignment marks or any other form of indicia for the purpose of determining proper placement of the device on the user, as suggested by Carn et al.

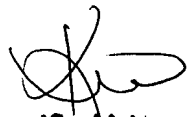
11. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson in view of U.S. Patent No. 5,779,659 ("Allen").

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Regarding claims 15 and 16, Peterson fails to teach elastic tension indicators. However, Allen teaches it is conventional in the art to provide elastic bandages with tension indicators for the purpose of indicating the amount of tension being applied to the bandage. It would have been obvious to one having ordinary skill in the art to modify Peterson with a tension indicator provided on the bandage including the removable protectors for the purpose of indicating the amount of tension applied to the user, as suggested by Allen.

Any inquiry concerning this communication should be directed to Kim M. Lee at telephone number (703) 308-1191.

kml  
July 14, 2000



**Kim M. Lee**  
**Patent Examiner**  
AU 3761